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## Survey of Periodicals

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## SURVEY OF PERIODICALS

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MASTERS IN EQUITY. By Henry E. Bellew, Boston University Law Review. Volume 5, Number 4.

The writer is clerk of the Superior Court of Suffolk County. He first deals, in his article, with the appointment of masters in chancery and the various changes that have been made by statute in respect thereto. He then gives a short background to his topic by reference to English and American Law generally. Next he takes up the various steps in a proceeding before a master and the steps necessary in taking an appeal. In conclusion he deals with the conclusiveness of a master's finding of facts under various circumstances.

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FRENCH DIVORCES. California Law Review, Volume 13, No. 6.

The article points out the growing practical importance of American divorces in France. It then takes up the particular case of *Slater v. Slater*, and under this case discusses the method in which French courts gain jurisdiction through residence of one of the parties within the country. The most prominent feature of the test of domicile to the French legal mind is the abandonment of former domicile elsewhere. If both parties be foreigners the French court has no jurisdiction; but if the defendant only is a foreigner it has jurisdiction and may enter a decree of divorce.

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THE EFFECT OF ONE VOID PROMISE IN A BILATERAL AGREEMENT. By Professor Williston of Harvard. Columbia Law Review. Volume 25, Number 2.

The distinguished author of "Treatise on Contracts" explains his statement in that book that if one promise in a bilateral agreement is not binding the result is that both promises fail for lack of sufficient consideration. This article is in answer to an article by Professor Oliphant of Columbia on Mutuality of Obligation in Bilateral Contracts at Law, which appeared in 25 Columbia Law Review 705 (1925).

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THE FORMATION OF INSURANCE COMPANIES. By Edwin W. Patterson, Columbia University Law School, University of Pennsylvania Law Review, Vol. 74, No. 1. An excerpt from a book, "The Insurance Commisisoner in the United States," now in press.

An exhaustive review of the powers and functions of the insur-

ance commissioner in the incorporation and licensing of insurance companies in the various states, whose laws on the subject are far from uniform, with references in the footnotes to the statutory as well as case law of all the states. The distinction between incorporation (official recognition of a new juristic person) and licensing (empowering it to engage in business) is first emphasized. In a number of states the insurance commissioner has nothing to do with the incorporation, in others he must approve the enterprise in certain particulars, though not actually granting the certificate of incorporation, and in some he is the incorporating official. The rule in the various states regarding the commissioner's discretionary power, his investigations of applicants for incorporation, his supervision over the sale of stock, and his functions in preventing similarity of corporate names, are topics treated in turn.

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THE RUSSIAN GOVERNMENT IN OUR COURTS. By Boardman Wright of the Bar of the City of New York. The Cornell Law Quarterly. Vol. 11, No. 1.

An interesting article in which the author asks the question, "Will our courts be compelled to modify their rules as to suits against foreign governments because of the commercial activities of the Russian Soviet Government?" It is an established principle of international law that suit will not lie in our courts to enforce a liability in contract or in tort against a foreign government without its consent. This rule was originated when commerce between nations was all conducted by private individuals and corporations. When a foreign government takes over the functions of private corporations—conditions change. Mr. Wright points out that situations might easily arise under the present rules which might be intolerable, and that our country must adopt the view that the rule is inapplicable to foreign governments engaging in business in their own name within the limits of our jurisdiction.

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THE INTERPRETATION OF "ISSUE" IN DE DONIS. Professor Clarence Milton Updegraff of the George Washington University Law School. Harvard Law Review. Vol. 29, Number 2.

A scientific and accurate treatment as to the interpretation of the word "issue" in the Statute De Donis. This ambiguity is due to the use of the Latin word "exitus" in the original statute which can be translated to mean either "definite" or "indefinite" issue. Thus the question amounts to whether a fee tail could be alienated by future

generations. The author says in conclusion: "The ambiguity of the act in using one word (*exitus*) with more than one meaning in an important passage led to the extension of the restraint on alienation to future generations. Made easy by the operative words of such a gift, *i. e.*, 'heirs of the body,' the word 'heirs' already having application to indefinite generations, the courts' sanction of the perpetuity was hard to overcome. But when a perfect perpetuity was realized, the victory of *forma doni* had been carried too far, and the reaction toward free alienation won a complete victory through the fine and recovery."

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PROPERTY REFORM IN ENGLAND. By Percy Bordwell of the University of Iowa Law School, Iowa Law Review. Vol. 11, No. 1.

In this article Mr. Bordwell reviews the seven major and five minor reforms in the Property Law of England which will be put into effect at the beginning of 1926. These reforms are contained in seven acts and parts of two other acts, and they incorporate or repeal most of the statutory law of real property going back to the time of Edward I. The seven major reforms pointed out by the author in this summary are designated as: (1) the simplification of the tenure of land; (2) the reduction of legal estates to two, the fee simple and the term for years; (3) the abolition of legal tenancies in common; (4) the keeping of most equities off the title; (5) the denial to the mortgagees of the fee; (6) the requirement that settlements should be by way of trusts; (7) the assimilation of the devolution of personal and real estate on intestacy.

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AN APPRAISAL OF ENGLISH PROCEDURE. By Edson R. Sunderland. Michigan Law Review. Volume 24, Number 2.

This article is the manuscript of an address delivered before the American Bar Association at Detroit, Michigan, September 3, 1925, in which the author ably and interestingly presents a comparison of English and American procedure, calling attention to the advantages of the English system. The article is outlined in three main divisions: First, Preparatory Work, under which is discussed summary judgments, declarations of rights, and disclosure and discovery; second, The Trial; and third, Appeals.

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STERILIZATION OF MENTAL DEFECTIVES. By Burke Shartel. Michigan Law Review. Volume 24, Number 1.

A review of the author of the act passed in 1923 by the legisla-

ture of Michigan "to authorize the sterilization of mentally defective persons," which was recently sustained in its main provisions (*Smith v. Command*, Probate Judge, 204 N. W. 140) by the Michigan Supreme Court. The author examines the provisions of the Michigan Act, and the constitutional power of the legislature to provide for sterilization of defectives. The article is at once an explanation of the Act, the decision, and a tolerant criticism of the reasoning of the court.

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THE COMMON LAW AND OUR FEDERAL JURISPRUDENCE. University of Pennsylvania Law Review, Vol. 74, No. 2.

This article constitutes the first of a series of three articles written by Chief Justice Robert Von Moschzisker of the Supreme Court of Pennsylvania dealing with the question of federal common law. The author points out that many federal judges and text writers have denied the existence of a federal common law. He then explains some of the historical reasons underlying this rather common belief. The article is exceedingly well written and interesting, and we shall look forward to the concluding two articles in the series with unusual interest.

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OUTLINES OF THE EVOLUTION OF ROMAN LAW. By Salvatore Riccobono, Palermo, Italy. University of Pennsylvania Law Review, Vol. 74, No. 1. Translated by Edward Nathan, A. B., LL. B., U. of Penn., American Consul at Palermo.

A learned epitome of the development of the Roman law, which may be represented graphically by a series of lines diverging rapidly to indicate the flourishing formative period of legal development from the XII Tables to Diocletian, then gradually converging into a single line representing the simplification from Constantine to Justinian. The development of the three branches of the law, the *ius civile*, the *ius gentium*, and the *ius honorarium*, the gradual superseding of strict law by equity, the functioning of the Prætor, the gradual displacement of verbal by written forms of action, the changes wrought by ordinances, the influence of Christian ethics, and the codification of the *Corpus Juris* are traced. The analogy between the evolution of Roman law and that of the English Common Law is pointed out. This explanation of the historical development of the Roman law will serve as a basis for the criticism and interpretation of the *Corpus Juris* and the institutes of modern law founded upon it.

SELF-INCRIMINATION. University of Pennsylvania Law Review. Vol. 74, No. 2.

In this article the author, John C. Knox, Justice of the United States Federal Circuit Court of New York City and formerly special assistant to the Attorney General of the United States, gives some criticisms of our rules of criminal procedure. His chief contention is that the principal defect in modern criminal procedure has grown out of the "rigidity" with which the self-incrimination clauses of the Constitution have been interpreted by our meticulous courts.

